IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1211 OF 1996.

Smt.Vini Vishwas Prabhune : Appellant.

versus

Shri Vishwas V. Prabhune : Respondent.

Mr.G.S.Hiranandani for the appellant.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 14th February 2005.

ORAL ORDER

1. Heard advocate for the appellant. Nobody is present for the respondent. Appellant is the wife and the respondent is her husband. She filed initially a petition for judicial separation and then amended it for divorce on the ground of cruelty before the Civil Judge, S.D. Thane who dismissed her Marriage Petition No.154 of 1992. Hence this appeal.

2. Counsel for the appellant pointed out that when the petition was filed in 1992 this petitioner was of 45 years and her husband was of the same age. Before their marriage the petitioner/wife was the widow and the respondent/husband was the widower. This was the second marriage for both of them. Before the marriage the petitioner was working as a Principal in the Private School. Both of them having their children before the marriage. But the petitioner could not cope up with the respondent because of the repeated taunting and want of cooperation and the insults reflected upon her. Before the trial Court both the petitioner and the respondent examined themselves and that was the only evidence and, considering the evidence on record the Court rejected the contention of the appellant. Hence this appeal.

3. Advocate for the appellant drew my attention to the the judgment of Full Bench of this Court reported in **AIR 814 Bombay 413 [Dr.Keshaorao Krishnaji Londhe v. Mrs. Nisha Londe]** where the word "cruelty" was broadly defined by the Division Bench after considering

the aims, object and other aspects of the Issue involved. The Division Bench ultimately concluded in para 15 as under :-

> "To conclude, in our view, the cruelty contemplated under S.13(1)(i-a) of the Act neither attracts the old English doctrine of danger nor the statutory limits embodied in old S.10(1)(b). The cruelty contemplated is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent, and, therefore, Madanlal's case (1980 Mah LJ 391) does not lay down the law on the point correctly."

While coming to this conclusion, the Court considered each judgments. For example, 1979 Mat LR 26 (Punj & Har) [Ashwini Kumar Sehgal v. Smt. Swatantar Sehgal] in which the Punjab and Harayana High Court has observed as under:-

> "Cruelty in such cases has to be of the type which should satisfy the conscience of the Court to believe that the relations between the parties had

> deteriorated to such an extent due to the conduct of one of the spouses that it has become impossible for them to live together without mental agony, torture or distress."

The another judgment in Balbir Kaur v. Dhir Dass [AIR 1979 Punj and Har 162] wherein it has been held that cruelty admits in its ambit and scope such acts that might even cause mental agony. The judgment of the Calcutta High Court in AIR 1980 Cal 370 was also taken into consideration where the Calcutta High Court has taken a view that the cruelty need not be of such a character as to cause danger to life, limb or health or to give rise to and that it has to be of the type contemplated under S.10(1)(b).

4. Since aforesaid judgment of the Division Bench, concluded and interpreted the concept cruelty, the same has to be taken into consideration. Both the parties in the instant case were educated. They entered into the 2nd marriage with full understanding and responsibility of each other. They agreed to certain does and not does. But the respondent

did not keep of his promise and to a woman, like petitioner, who was in her advanced age and enjoying the post of Principal, the respondent gave insulting treatment after one year of the marriage and continued to do so till they lived together. Ordinarily such insulting treatment may not amount to cruelty but looking to the status of the parties, their advanced age and the respect they commanded in the society, these insults and taunts were bound to cause mental agony and torture. This aspect of the matter and broader definition of word "Cruelty" was not considered by the trial Court and, the trial court went on strict definition of word "Cruelty" and, therefore, came to a wrong conclusion.

5. The counsel for the appellant contended that since the parties were not living together since after two years of the marriage and from May 1991 they have not lived together, this is, therefore, a case of irretrievable break down. This is, therefore, a case where the petitioner is entitled for divorce.

6. Considering the submissions made by the counsel for the appellant in the aforesaid

background and looking to the peculiar facts and circumstances of the case, it has to be held that the petitioner has succeeded in proving her case. The counsel for the petitioner states that the petitioner is not going to claim any maintenance from the respondent. In view of this, the appeal is allowed. The impugned order is set aside. There shall be decree of divorce in favour of the petitioner and against the respondent under Section 13(1)(b) of the Hindu Marriage Act. No order as to costs. Certified copy expedited.

[D.G.DESHPANDE]

14/02/2005 JUDGE.